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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,145	01/25/2002	Stewart Carl Feinberg	AD6852USNA	2450

23906 7590 03/26/2003

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WILMINGTON, DE 19805

EXAMINER

MULLIS, JEFFREY C

ART UNIT PAPER NUMBER

1711

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/057,145

Applicant(s)

FEINBERG, STEWART CARL

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Talkowski (USP 5,866,658), cited by applicants.

Talkowski discloses a composition containing a blend of ionomers and polyamide (Abstract) to which may be added "metallic colors" (column 3 line 1).

Claims 1-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wang et al. (USP 5,599,877).

Wang et al. disclose a composition containing an ionomer containing a low molecular weight ethylene acrylic acid copolymer to increase processability available from Allied Signal as "AC

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copolymer". Note Example 25. Note that the composition may contain polyamide at column 16 line 54. Note that applicants' specification discloses that the ethylene acrylic acid copolymers disclosed in U.S. Patent 5,118,746 can be used as low molecular weight ethylene acrylic acid copolymers while U.S. Patent 5,118,746 discloses that A-C copolymers can be used as ethylene acrylic acid copolymers. The A-C copolymer in the Example of Wang et al. therefore reasonably appears to have applicants' melt impact characteristic but in any case even if applicants' melt index is not inherently present in the specific Example of Wang et al. cited, it would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to arrive at applicants' melt index in that it only requires routine experimentation to find the optimal or workable range of a result effective variable and in that the low molecular weight copolymer is disclosed by patentees as increasing melt processability and therefore suggests that melt processability is a function of the molecular weight of the ethylene acrylic acid copolymer. With regard to use of a combination of polyamide and ionomer and ethylene acrylic acid, addition of the ethylene acrylic acid/ionomer of the Example of Wang et al. (i.e. Example 25) to polyamide would have been obvious to a practitioner having ordinary skill in the art at the time of the invention in that Wang et al. specifically disclose that his compositions may

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contain polyamide and further motivated by Wang's disclosure of increased melt processability absent any showing of surprising or unexpected results.

12 Claims 1-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Swidler (USP 5,840,453).

Note that Example 14 of Swidler discloses that AC 540 tradenamed material may be used and also note that applicants' specification specifically utilizes AC 540 in applicants' Examples. Therefore applicants' and patentees' melt index characteristic would reasonably appear to be inherently the same and note also that Example 14 of patentees also utilizes AC 201 and as this material is an ethylene acrylic acid, it can be viewed as an ionomer. In any case the use of ionomer is disclosed elsewhere in Swidler's specification. Note column 8 line 45 which discloses that polyamides may be added to the composition. Note also that Example 14 contains zinc oxide, a metal containing white pigment.

There are no specific examples in which applicants' combination of polyamide and other components are utilized although Example 14 of patentees contains all of applicants' required components except for the polyamide.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to add polyamide to the composition of Example 14 since patentees specifically

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disclose that their composition may include polyamides and in the expectation of adequate results absent any showing of surprising or unexpected results.

It is noted that the term "up to" in applicants' claims embraces zero amounts and therefore components recited as being present at levels of up to are optional.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (703) 308-2820. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (703) 308-2462. The fax phone number for this Group is before final (703) 872-9310 and after final (703) 8729311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

J. Mullis:cdc

March 24, 2003

Jeffrey Mullis  
Primary Examiner  
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